

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Fairfield Sentry Ltd. (In Liquidation), et al.,

Plaintiffs,

-against-

HSBC Private Bank (Suisse) S.A., et al.,

Defendants.

No. 12 - _____

**NOTICE OF MOVING DEFENDANTS' EMERGENCY MOTION FOR A STAY OF
THE BANKRUPTCY COURT'S MEMORANDUM DECISION AND ORDER
GRANTING THE FOREIGN REPRESENTATIVE'S MOTION SEEKING
EXPEDITED INITIAL DISCLOSURES AND LEAVE TO APPEAL THAT ORDER**

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Private Bank (C.I.) Limited (sued here as HSBC
Private Bank (Guernsey) Ltd.), HSBC Private
Banking Nominee 1 (Jersey) Limited (sued here as
FS/HSBC Private Banking Nom), Robinson & Co.,
Banco Nominees 2 (Guernsey) Limited (sued here as*

Banco Nominees (IOM) Limited, HSBC Guyerzeller Trust Company A.G., HSBC Securities (Panama) S.A., HSBC International Trustee Limited, HSBC Institutional Trust Services (Asia) Limited, Somers Nominees (Far East) Limited, HSBC Bank Bermuda Limited, Caceis Bank Luxembourg, Caceis Bank as successor in interest to CDC IXIS, Caceis Bank as successor in interest to Caceis Bank Ex Ixis Is, Crédit Agricole (Miami), Crédit Lyonnais, Crédit Lyonnais Miami, Crédit Agricole (Suisse) S.A., Crédit Agricole Titres, Calyon Paris, Cais Bank, Citibank (Switzerland) AG, BNP Paribas (Suisse) SA, BNP Paribas (Suisse) SA Ex Fortis, BNP Paribas (Suisse) SA Private, BNP Paribas Arbitrage SNC, BNP Paribas Securities Nominees, Fortis Bank SA/NV n/k/a BNP Paribas Fortis, BNP Paribas España, and BGL BNP Paribas (sued as FS/ Fortis Banque Luxembourg and FS/Banque Générale du Luxembourg), BNY Mellon International Ltd. and BNY AIS Nominees Limited

Upon this Notice of Moving Defendants' Emergency Motion for a Stay of the Bankruptcy Court's Memorandum Decision and Order Granting the Foreign Representative's Motion Seeking Expedited Initial Disclosures and Leave to Appeal that Order (the "Emergency Motion"), the Memorandum of Law in Support of the Emergency Motion, dated June 28, 2012 (the "Memorandum of Law"),¹ the Declarations of Thomas J. Moloney and Charles J. Keeley, sworn on June 28, 2012, and all prior pleadings and proceedings herein, defendants HSBC Private Bank (Suisse) S.A., HSBC Securities Services (Luxembourg) S.A., HSBC Bank USA N.A., HSBC Private Bank (C.I.) Limited (sued here as HSBC Private Bank (Guernsey) Ltd.), HSBC Private Banking Nominee 1 (Jersey) Limited (sued here as FS/HSBC Private Banking Nom), Robinson & Co., Banco Nominees 2 (Guernsey) Limited (sued here as Banco Nominees (IOM) Limited), HSBC Guyerzeller Trust Company A.G., HSBC Securities (Panama) S.A., HSBC International Trustee Limited, HSBC Institutional Trust Services (Asia) Limited, Somers Nominees (Far East) Limited, HSBC Bank Bermuda Limited, Caceis Bank Luxembourg, Caceis Bank as successor in interest to CDC IXIS, Caceis Bank as successor in interest to Caceis Bank Ex Ixis Is, Crédit Agricole (Miami), Crédit Lyonnais, Crédit Lyonnais Miami, Crédit Agricole (Suisse) S.A., Crédit Agricole Titres, Calyon Paris, Cais Bank, Citibank (Switzerland) AG, BNP Paribas (Suisse) SA, BNP Paribas (Suisse) SA Ex Fortis, BNP Paribas (Suisse) SA Private, BNP Paribas Arbitrage SNC, BNP Paribas Securities Nominees, Fortis Bank SA/NV n/k/a BNP Paribas Fortis, BNP Paribas España, and BGL BNP Paribas (sued as FS/ Fortis Banque Luxembourg and FS/Banque Générale du Luxembourg), BNY Mellon International Ltd. and BNY AIS Nominees Limited (collectively, "Moving Defendants"), by their attorneys Cleary Gottlieb

¹ To the extent not defined herein, capitalized terms shall have the meaning ascribed to them in the Memorandum of Law.

Steen & Hamilton LLP, respectfully move the United States District Court for the Southern District of New York (the “District Court”) for (1) an order staying the proceedings in the adversary proceedings administratively consolidated in the Bankruptcy Court under the caption *Fairfield Sentry Ltd. v. Theodoor GGC Amsterdam*, Adv. Pro. No. 10-03496 (the “Actions”) pending disposition of the Emergency Motion and, if the Emergency Motion is granted, the appeal of the Bankruptcy Court’s decision dated June 27, 2012 (the “Order”), or until the Emergency Motion is denied, and (2) leave to appeal, on an emergency basis, the Order pursuant to 28 U.S.C. § 158(a) and Federal Rules of Bankruptcy Procedure 8003, 8005 and 8011(d).

This Emergency Motion and supporting documentation are being served contemporaneously with this filing on the Foreign Representative’s counsel at the following address:

David J. Molton, Esq.
May Orenstein, Esq.
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**Statement of Facts Necessary to an Understanding
of the Questions to be Presented on Appeal**

The Memorandum of Law sets forth Moving Defendants’ statement of facts necessary to an understanding of the questions to be presented on appeal, which statement is incorporated herein by reference.

Statement of the Questions on Appeal and the Relief Sought

Moving Defendants seek leave to appeal from the Order with respect to the following controlling issues of law:

1. Whether the Bankruptcy Court improperly read boilerplate language in certain of the Moving Defendants' subscription agreements acknowledging their willingness to comply with OFAC money laundering and anti-terrorist regulations to the extent those regulations could require disclosure of beneficial owners that might be designated as "Prohibited Persons" under the OFAC regulations as constituting instead general waivers of the customers confidentiality and data protection laws of the Moving Defendants home jurisdictions, for any and all purposes, whether or not related to OFAC regulations, and by which laws the Moving Defendants are prohibited from disclosing their customers' identities under criminal, civil and/or regulatory sanctions.

2. Whether the Bankruptcy Court committed a fundamental error of law by ruling on the merits of the discovery dispute without first considering threshold jurisdictional issues regarding its power to enter any order.

3. Whether the Bankruptcy Court committed a fundamental error of law by failing to conduct any analysis of the factors underlying the principles of international comity and ordering Moving Defendants to make disclosures in violation of foreign bank customer confidentiality and privacy laws.

Statement of Reasons Why the Appeal Should Be Granted

The Memorandum of Law sets forth the Moving Defendants' statement of reasons why the appeal should be granted, which statement is incorporated herein. The grounds advanced in support of the motion were submitted to Judge Lifland.

Moving Defendants have made no prior requests to this Court or to any other court for the relief requested by this Motion.

WHEREFORE, Moving Defendants respectfully request that this Court enter an order granting the relief requested herein, and such other and further relief as the Court deems just and appropriate.

Dated: New York, New York
June 28, 2012

Respectfully submitted,

CLEARY GOTTlieb STEEN & HAMILTON LLP

By: 

Thomas J. Moloney, a Member of the Firm

Attorneys for Defendants HSBC Private Bank (Suisse) S.A., HSBC Securities Services (Luxembourg) S.A., HSBC Bank USA N.A., HSBC Private Bank (C.I.) Limited (sued here as HSBC Private Bank (Guernsey) Ltd.), HSBC Private Banking Nominee 1 (Jersey) Limited (sued here as FS/HSBC Private Banking Nom), Robinson & Co., Banco Nominees 2 (Guernsey) Limited (sued here as Banco Nominees (IOM) Limited), HSBC Guyerzeller Trust Company A.G., HSBC Securities (Panama) S.A., HSBC International Trustee Limited, HSBC Institutional Trust Services (Asia) Limited, Somers Nominees (Far East) Limited, HSBC Bank Bermuda Limited, Caceis Bank Luxembourg, Caceis Bank as successor in interest to CDC IXIS, Caceis Bank as successor in interest to Caceis Bank Ex Ixis Is, Crédit Agricole (Miami), Crédit Lyonnais, Crédit Lyonnais Miami, Crédit Agricole (Suisse) S.A., Crédit Agricole Titres, Calyon Paris, Cais Bank, Citibank (Switzerland) AG, BNP Paribas (Suisse) SA, BNP Paribas (Suisse) SA Ex Fortis, BNP Paribas (Suisse) SA Private, BNP Paribas Arbitrage SNC, BNP Paribas Securities Nominees, Fortis Bank

SA/NV n/k/a BNP Paribas Fortis, BNP Paribas España, BGL BNP Paribas (sued as FS/ Fortis Banque Luxembourg and FS/Banque Générale du Luxembourg), BNY Mellon International Ltd. and BNY AIS Nominees Limited